



Office of the Attorney General

State of Texas

August 23, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. Robert E. Diaz
Police Legal Advisor
City of Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR93-545

Dear Mr. Diaz:

The City of Arlington Police Department (the "department") received a request for information concerning all reported robberies, sexual assaults, and attempted sexual assaults in a certain area and requested a decision of this office pursuant to section 7 of the Texas Open Records Act (the "act"), V.T.C.S. article 6252-17a. You advised us that some of the requested information has been made available to the requestor. You claimed that sections 3(a)(1), 3(a)(8), and 3(a)(11) except the remaining information from required public disclosure. Because the decision in *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ) required reexamination of the section 3(a)(11) exception, we allowed you an additional 15 days to submit arguments in accordance with the *Gilbreath* decision. We now consider the additional arguments you have submitted for withholding the requested information under sections 3(a)(1), 3(a)(8), and 3(a)(11) of the act. We have assigned your request ID# 19126.

You advise us that four investigation reports are responsive to the request for information. You have submitted three of these reports to us for review. We understand that the sexual assault investigation reports dated November 1, 1991, and December 6, 1991, and the robbery investigation report dated May 19, 1992, are related to closed investigations, but that the attempted sexual assault investigation report dated October 16, 1992, which you have not submitted to us for review, is related to an active investigation.

You claim that the marked portions of the November 1, 1991, and December 6, 1991, sexual assault reports are excepted from required public disclosure by section 3(a)(1), which excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 3(a)(1) by the Texas Supreme Court in *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977) (hereinafter "*Industrial Foundation*"). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and it is of no legitimate concern to the public. In Open Records Decision

No. 393 (1983), this office held that information that identifies or tends to identify a victim of a serious sexual offense may be withheld under common-law privacy. *See also* Open Records Decision No. 339 (1982). We have marked the information that identifies or would tend to identify victims of a serious sexual offense. We conclude that you must withhold this information from required public disclosure under section 3(a)(1) of the act. The remainder of the information that you have marked, however, does not identify or tend to identify victims of a serious sexual offense, nor are we aware that it is otherwise made confidential by law. Accordingly, this information may not be withheld from required public disclosure under section 3(a)(1) of the act.

You also claim that the requested information is excepted from required public disclosure by section 3(a)(8) of the act, which excepts:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

Traditionally, when applying section 3(a)(8), our office has distinguished between cases that are still under active investigation and those that are closed. In cases that are still under active investigation, this section excepts from disclosure all information except that generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976) (citing *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (hereinafter "*Houston Chronicle*")). Accordingly, except for information deemed public by the court in *Houston Chronicle*, we conclude that the attempted sexual assault investigation report dated October 16, 1992 may be withheld from required public disclosure under section 3(a)(8) of the act.

Once a case is closed, however, information may be withheld under section 3(a)(8) only if its release "will unduly interfere with law enforcement or crime prevention." *See* Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 366 (1983) at 3; 216 (1978) at 3 (citing *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). We understand that the investigation reports dated November 1, 1991, December 6, 1991, and May 19, 1992 relate to law enforcement investigations that are no longer pending. You have not demonstrated that release of these reports would unduly interfere with law enforcement or crime prevention, nor is such apparent from the face of the documents. We conclude, therefore, that you may not withhold these reports under section 3(a)(8) of the Open Records Act.

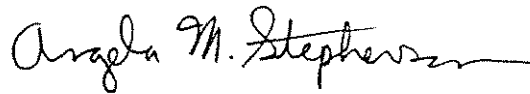
Finally, you claim that the investigation reports submitted to us for review are excepted from required public disclosure by section 3(a)(11), which excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993) (copy

enclosed), this office reexamined the section 3(a)(11) exception and held that section 3(a)(11) excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5-6. Section 3(a)(11) does not except purely factual information from disclosure. *Id.* at 5.

We have examined the documents submitted to us for review. While the investigation reports relate to the department's policy functions, *i.e.* the investigation of crime, they appear to contain mostly factual information. For your convenience, we have marked the information consisting of advice, recommendations, opinions, and other material reflecting the department's policy functions. *See* Open Records Decision No. 565 (1990) at 9 (holding that polygraph test results are excepted under section 3(a)(11) as the opinion of the polygraph examiner). This information may be withheld from required public disclosure under section 3(a)(11) of the act. The remaining information, except as noted above, must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Angela M. Stepherson
Assistant Attorney General
Open Government Section

AMS/GCK/jmn

Enclosures: Open Records Decision No. 615
marked documents

Ref.: ID# 19126

cc: Mr. D.C. Malone
P.O. Box 14014
Fort Worth, Texas 76117
(w/o enclosures)